

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4552 of 2014

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Ram Bilash Sah

.... Petitioner/s

Versus

Most. Tara Devi & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Bhagat

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 20-01-2016 1. Heard the learned counsel, Mr. J.P. Bhagat, on behalf of
the petitioner.

2. This application under Article 227 of the Constitution of
India has been filed by the defendants petitioners against the order
dated 06.12.2013 passed by the learned Sub Judge III, Khagaria in
Title Suit No.50 of 2005 whereby the learned Court below rejected
the application filed by the petitioner under Order VII Rule 11(d)
read with Section 11 and 151 of the Code of Civil Procedure.

3. It appears that the aforesaid suit was filed by the
plaintiff respondent for declaration of title and delivery of
possession of the suit property. In the said suit, it was alleged by
the plaintiff that in earlier Title Suit No.100 of 1971 filed by the
father of the defendant, the husband of the plaintiff No.1 was only
made defendant. The plaintiff filed application under Order I Rule



10 for being added as party in the suit which was rejected. The plaintiff in fact has purchased the property from Dahuri Devi on 14.01.1994. She also prayed to the effect that the delivery of possession in execution case No.10 of 1982 may be declared that it is not regarding the suit property. The petitioner then filed application under Order VII Rule 11(d) read with Section 11 and 151 of the Code of Civil Procedure praying for rejection of the plaint. The learned Court below by the impugned order rejected the said application.

4. The learned counsel for the petitioner submitted that in fact the husband was party in earlier suit and the present suit was the subject matter in the earlier suit. The appeal filed by the husband was dismissed and the present petitioner obtained delivery of possession with respect to the suit in execution case. Therefore, the present suit is barred by the principle of res judicata.

5. Order VII Rule 11 provides the grounds on which the plaint can be rejected. According to Order VII Rule 11(d), the plaint can be rejected where the suit appears from the statement in the plaint barred by any law. In the present case, from perusal of the plaint, it does not appear that the suit filed by the plaintiff for

declaration of title is barred by any law as the Civil Court has the jurisdiction to try the suit for declaration of title. So far the ground raised by the petitioner that the Court has no jurisdiction to try the same issue because the earlier suit has already been decided is concerned, it may be mentioned here that while deciding the application under Order 7 Rule 11(d)CPC, the Court cannot read the written statement or the statements made in the defence. Further the principle of res judicata is not a bar created by any law rather it is rules of evidence and it is only an issue to be decided along with other issues as provided in Order XIV Rule 2 of the Code of Civil Procedure. Now, therefore, the Court below has rightly rejected the application filed by the petitioner under Order VII Rule 11(d) CPC, further it may be mentioned here that in the earlier suit, the plaintiff is not a party and her application for being added as party was rejected. She is claiming title independently being the purchaser in the year 1944.

6. Thus, this writ application is devoid of any merit and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

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